

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS M. McHUGH,

Defendant.

ORDER

07-cr-100-jcs

Defendant Thomas McHugh has filed a motion to correct a clerical error in his judgment and commitment entered by the Honorable John C. Shabaz. Because Judge Shabaz is on an extended medical leave, I am handling the cases assigned to him, including this one.

Defendant asserts that when Judge Shabaz sentenced him, he ordered that defendant would be eligible for substance abuse education and treatment programs offered by the Bureau of Prisons, but did not say that the programs were to be limited by the words “which do not include an early release.” In his written order, however, Judge Shabaz added the limitation.

It is settled law that “if an inconsistency exists between an oral and the later written

sentence, the sentence pronounced from the bench controls.” United States v. Becker, 36 F.3d 708, 710 (7th Cir. 1994). Because the phrase in question was not included in the oral sentencing statement, I will treat it as a clerical error and delete it from the judgment and commitment pursuant to Fed. R. Crim. P. 36, which allows the court to correct clerical errors at any time.

ORDER

IT IS ORDERED that the judgment and commitment entered herein by the Honorable John C. Shabaz on October 11, 2007, is corrected by deleting the phrase “which do not include an early release” from the third line on Page 2 of the judgment. In all other respects, the order remains as entered on October 11, 2007.

Entered this 23d day of April, 2008.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge